

January 30, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. & Constitution Ave., NW
Washington, DC 20551

**Re: Comments for Docket No. R-1167 through R-1171
Relating to Regulations Z, B, E, M and DD**

Dear Ms. Johnson:

Bankers Systems, Inc., (BSI)¹ appreciates the opportunity to comment on the Federal Reserve Board's (the Board) publication of proposed rules relating to establishing a consistent definition for the "clear and conspicuous" standards within Regulations B, E, M, Z, and DD. Under the proposed regulations, "clear and conspicuous" would be defined to mean "a disclosure that is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure." Among other things, the proposed commentary provides examples of when disclosures are "reasonably understandable" and in a form "designed to call attention" to the content.

BSI fully supports the intentions of these proposed rules to help ensure that "consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services." However, BSI has several observations to make with regards to the proposed regulations and commentary.

Reasonably Understandable Standard

The proposed commentary provides several useful examples of how to draft disclosures that are reasonably understandable. However, the recurrent directive to follow certain standards "whenever possible" is too strict. For example, the proposed commentary suggests using "short explanatory sentences or bullet lists whenever possible" as well as to use an "active voice whenever possible." Under these standards, even a well-drafted and easily understandable disclosure might be subject to the criticism that it fails the standard because a sentence here or there was passive or could have been made shorter. Instead of opening the door to litigation by suggesting the examples must be followed "whenever possible," the commentary should simply make it clear that these are general drafting guidelines that have to be interpreted within the context of an entire document. In addition, the standard to "avoid legal and highly technical business terminology whenever possible" should be removed in its entirety. This standard is unnecessary

¹ BSI is a vendor of compliance solutions for the financial services industry. Among other things, BSI provides financial institutions with compliance solutions to help them meet the disclosure requirements of the regulations listed above.

because drafters are already encouraged to use “everyday words.” Also, there might be many instances where the clearest, most understandable term is a legal or technical term.

Designed to Call Attention Standard

The proposed commentary includes guidance relating to type size. That proposed commentary reads as follows:

Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point do not automatically violate this standard; however, disclosures printed in less than 8-point type would likely be too small to satisfy the standard.

Under the proposed commentary, a financial institution could never be sure if the type size it used satisfied the standard. All the institution would know is if it “generally” met the standard, did not “likely” satisfy the standard, or did “not automatically violate the standard.” If the Board chooses to move forward with this standard, we recommend providing specific guidance regarding when 12-point type must be used and when less than 12-point type, including 8-point type, is acceptable. Left as it is, the guidance will ultimately have to come from the courts. As an alternative, BSI suggests a standard with a brighter line, such as would be offered by a minimum type size requirement.

In addition, the Board should be aware that there are different tools used to determine the type size of print and they can yield inconsistent results. BSI has frequently created products designed to meet specific type size standards. On occasion, BSI has received comment from various industry sources that a type size requirement was not being met. As a result, in order to account for variations among point size readers, and other issues such as shrinkage, BSI typically increases by 1-point any required type size below 12-point type and increases by at least 2-points any required type size of 12-points or higher. If the Board implements a type size requirement, BSI recommends allowing for a tolerance to account for these discrepancies.

The proposed commentary also suggests using “boldface or italics for key words.” Using boldface or italics for key words in effect creates another tier of conspicuousness for some disclosures. In Regulation Z for example, using this standard would create three levels of conspicuousness, one level for the APR and Finance Charge, one level for disclosures with key words, and one level for everything else. A uniform clear and conspicuous standard should not make some disclosures more conspicuous than others merely because one disclosure contains a so-called “key word” and the other does not.

Combining Disclosures with Other Information

Additionally, the proposed commentary states that combining disclosures with other information might affect whether the clear and conspicuous standard is met. That proposed commentary reads as follows:

Other Information. Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

In addition, a comment in the supplementary information states that, “Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.”

Currently, it is common practice to combine some disclosures with other information. For example, it is nearly impossible to draft a meaningful open-end credit disclosure without combining the disclosures with other contractual information. As written, the proposed commentary and supplementary information cast serious doubt on the continued viability of this common practice. Absent a specific mandate, the commentary should not indicate a bias toward segregated disclosures. Instead, the commentary should provide specific guidance on when combining disclosures with other information could render the disclosures inconspicuous.

Preemption

The Board should address the extent to which these disclosure standards preempt state laws.

Effective Date

Due to the large number of disclosures affected, it will take the industry a long time to implement these new disclosure standards. In addition, for many vendors and financial institutions, the disclosures are produced by software or other electronic means. Updating these production tools is expensive and time consuming. As a result, the standards should not be made mandatory for at least 18 months.

Respectfully submitted,

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On behalf of Bankers Systems, Inc., a WoltersKluwer company